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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

MUR 6778)

David Hale for Congress)

and David Hale as treasurer)

DISMISSAL AND

CASE CLOSURE UNDER THE

ENFORCEMENT PRIORITY

SYSTEM

CELA

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances. The Office of General Counsel has scored MUR 6778 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.¹

For the reasons set forth below, the Office of General Counsel recommends that the Commission exercise its prosecutorial discretion and dismiss the allegation that David Hale for

¹ The EPS rating information is as follows:
Filed: March 31, 2014.

1 Congress and David Hale in his official capacity as treasurer (collectively the "Committee")
2 violated 52 U.S.C. § 30120(a)(1) and 11 C.F.R. § 110.11(c)(2).²

3 **I. FACTS**

4 Complainant John J. Rossetto alleges that the Committee violated the Act and
5 Commission regulations by distributing door hangers with inadequate disclaimers. Compl. at 1.
6 On December 30, 2013, Hale announced on the Committee's Facebook page that he would
7 distribute door hangers "across the district," and attached images of the door hangers to the post.
8 *Id.*, Attach. 3. On the front were Hale's photograph, name, desired office, platforms, and an
9 appeal to vote. *Id.*, Attach. 1. On the back was additional information including a slogan, more
10 platforms, a statement of Hale's philosophy, and the Committee's contact information. *Id.*,
11 Attach. 2. Also on the back was a disclaimer stating that the door hangers were "Paid for by
12 David Hale for Congress." *Id.* The Complaint argues that because the disclaimers were not
13 contained inside a printed box, they were "unclear and inconspicuous and not clearly readable."
14 *Id.* at 1.

15 In its Response, the Committee confirms that the images attached to the Complaint are
16 accurate and acknowledges that the disclaimers were not contained inside a printed box. Resp. at
17 1; *see also* Resp., Attachs. 1, 2. However, the Committee argues that it acted in good faith since
18 the disclaimers were "clearly visible," "clearly readable," and "conspicuously and prominently
19 displayed." Resp. at 1-2 (emphasis omitted). According to the Committee, there was "clear
20 contrast" between the disclaimers' text and the door hangers' background, and the disclaimers
21 were printed with "large lettering." *Id.* at 2 (emphasis omitted). Furthermore, the Committee

² Hale was an unsuccessful candidate for the 2014 primary election for Illinois's sixteenth congressional district.

1 states that the production of door hangers was part of Hale's first experience as a Congressional
2 candidate and that Hale ran the campaign on his own, without an attorney or campaign manager,
3 and with little funding.³ *Id.* at 2. In addition, Hale claims that he believed the disclaimers
4 complied with the Act and Commission regulations based on his reading of the Campaign Guide
5 for Congressional Candidates and Committees. *Id.*

6 II. ANALYSIS

7 The Act provides that whenever any person makes a disbursement for the purpose of
8 financing communications that expressly advocate the election or defeat of a clearly identified
9 candidate, such communication must include a disclaimer clearly stating who paid for the
10 communication and indicating whether it was authorized by a candidate or a candidate's
11 authorized committee. 52 U.S.C. § 30120(a)(1); *see also* 11 C.F.R. § 110.11(a)(2).
12 Furthermore, all public communications made by a political committee must include
13 disclaimers.⁴ 11 C.F.R. § 110.11(a)(1). In the case of printed communications that are required
14 to include a disclaimer, the disclaimer should be: (1) of sufficient type size to be clearly
15 readable; (2) contained in a printed box set apart from the other contents; and (3) printed with a
16 reasonable degree of color contrast between the background and the printed statement. 11 C.F.R.
17 § 110.11(c)(2)(i)-(iii).

18 The Committee's door hangers required adequate disclaimers because they were
19 communications that expressly advocated for the election of David Hale and, further, because
20 they were general public political advertising paid for by a political committee. While the door

³ The Committee purchased a total of 7,500 door hangers for \$368.95 out of which a total of 5,500 were distributed by hand during the campaign and the remaining 2,000 were discarded. Resp. at 2; *see also* David Hale for Congress 2013 Year-End Report at 14 (Jan. 28, 2014).

⁴ Commission regulations define "public communication" as a "communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." 11 C.F.R. § 100.26.

1 hangers appear to have contained disclaimers on one side, the disclaimers were not contained
2 within a printed box. See Resp., Attach. 2. As such, the disclaimers did not satisfy the technical
3 requirements of Commission regulations applicable to printed communications. However, we
4 note that the disclaimers provided sufficient identifying information so that the public likely
5 would not have been misled as to who paid for the door hangers. The disclaimers clearly stated
6 the source of funding and they were printed in the same size and with the same contrast as other
7 content on the back of the door hangers such as Hale's platforms, slogan, and the Committee's
8 contact information.

9 Accordingly, in furtherance of the Commission's priorities, relative to other matters
10 pending on the Enforcement docket, the Office of General Counsel recommends that the
11 Commission exercise its prosecutorial discretion and dismiss this matter pursuant to *Heckler v.*
12 *Chaney*, 470 U.S. 821 (1985). The Office also recommends that the Commission approve the
13 attached Factual and Legal Analysis and the appropriate letters, and close the file.

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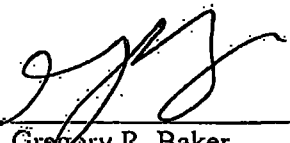
RECOMMENDATIONS

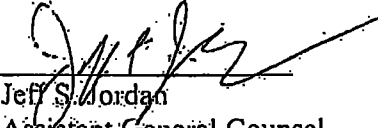
1. Dismiss the allegation that David Hale for Congress and David Hale in his official capacity as treasurer violated 52 U.S.C. § 30120(a)(1) and 11 C.F.R. § 110.11(c)(2), as a matter of prosecutorial discretion pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985);
2. Approve the attached Factual and Legal Analysis and the appropriate letters; and
3. Close the file.

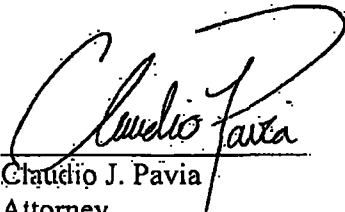
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